



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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WATER
DIVISION

April 1, 2022

Paula Wilson
Idaho Department of Environmental Quality
1410 North Hilton
Boise, Idaho 83706-1255

Re: EPA Comments on Idaho's Proposed Rule to Update Human Health Criteria for Arsenic,
Published in the March 2, 2022 Idaho Administrative Bulletin – Docket No. 58-0102-2201

Dear Ms. Wilson:

Thank you for the opportunity to provide comments to the Idaho Department of Environmental Quality (DEQ) regarding the proposed arsenic human health criteria published for public review on March 2, 2022. The U.S. Environmental Protection Agency (EPA) greatly appreciates the revisions DEQ incorporated in the proposed rule to address EPA's previous comments, including the expression of the "Water and Fish Criteria," the fish tissue element only superseding the water column element under steady state conditions, and application of the fish tissue element.

EPA offers the following comments on the proposed rule for your consideration. EPA's comments reiterate the recommendations provided in the December 1, 2021 letter and include additional details regarding the site-specific bioaccumulation factor (BAF) translation. Additionally, we would like to alert you of the agency's plans to propose a federal rule later this year regarding consideration and protection of tribal reserved rights when developing water quality standards.

Subsection 210.01.b – Fish Only Criteria (Recreation Uses)

Footnote 'k' – Supersede and Steady State Conditions

EPA appreciates DEQ's efforts to address previous comments regarding the fish tissue element only superseding the water column element under steady state conditions by clarifying in Footnote 1 that it only supersedes the water column element when "there are no new or increasing point source discharges of arsenic." Because nonpoint sources may also cause non-steady state conditions, EPA believes that steady state conditions should not be limited to point source discharges and, instead, should be based upon a determination of no new or increasing discharges of arsenic from all sources. EPA recommends revising the footnote accordingly.

Subsection 210.03.3.e.iv and e.v. – Site-Specific BAF Translation

EPA appreciates that DEQ added additional details regarding site-specific translation requirements and expanded the single water column sample to samples being representative of the annual average concentration at the site. As noted in DEQ's response to comments documentation, site-specific BAF

translations are not a novel approach. However, as also noted by DEQ, the relationship between the concentration of inorganic arsenic in water and fish is uncertain, which is different than the other parameters for which DEQ has developed translation guidance (i.e., methylmercury and selenium). Therefore, EPA recommends DEQ includes additional details in rule to ensure repeatable, predictable outcomes, including the minimum number of samples required and whether more than one sampling event is required over the course of the year. EPA supports DEQ's plans to develop an implementation guidance document and recommends that it include other important information such as sample location, details regarding species selection, and the methods that will be used to collect, prepare, and analyze the fish and water samples.

EPA recommends DEQ either removes the language referencing "other scientifically defensible method for deriving protective BAF," or specify that site-specific water column values based on BAFs derived using other methods will be adopted into rule and submitted to EPA for review and action under Clean Water Act (CWA) section 303(c). EPA understands that such situations will be rare and likely better suited to site-specific criteria development where EPA can evaluate the method used; EPA cannot simply conclude that any "other scientifically defensible method" will necessarily result in values that will be protective of the applicable designated use. Additionally, it is still unclear how a site-specific translation would relate to the otherwise applicable water column criterion element of 4.3 µg/L. EPA recommends that the rule language clarify if a site-specific translation would supersede the otherwise applicable water column criterion element.

Tribal Reserved Rights

As discussed with DEQ in January 2022, EPA is pursuing a change to its water quality standards regulations to ensure that water quality standards do not impair tribal reserved rights. EPA expects to propose these regulatory revisions in late Summer 2022. EPA recommends that DEQ evaluates whether revisions to Idaho's water quality standards, such as a subsistence designated use and associated human health criteria, where applicable, are needed to protect tribes exercising their treaty-reserved subsistence fishing rights in Idaho.

EPA appreciates DEQ's continued efforts to evaluate potential approaches to revising Idaho's human health criteria for arsenic. EPA looks forward to continuing to coordinate this effort with DEQ and provide technical support. Please do not hesitate to contact me at (208) 378-5626 or kusnierz.lisa@epa.gov if you have any questions.

Sincerely,

Lisa Kusnierz
WQS & Regional Monitoring Coordinator

cc: Jason Pappani, Surface Water Bureau Chief, DEQ